



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2638

Introduced 1/20/2006, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

420 ILCS 42/5
420 ILCS 42/10
420 ILCS 42/15
420 ILCS 42/25
420 ILCS 42/30
420 ILCS 42/32
420 ILCS 42/35
420 ILCS 42/40

Amends the Uranium and Thorium Mill Tailings Control Act to reflect the Illinois Emergency Management Agency's assumption of duties assigned to the Agency's predecessor, the Department of Nuclear Safety. Effective immediately.

LRB094 14566 RSP 49509 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Uranium and Thorium Mill Tailings Control
5 Act is amended by changing Sections 5, 10, 15, 25, 30, 32, 35,
6 and 40 as follows:

7 (420 ILCS 42/5)

8 Sec. 5. Legislative findings.

9 (a) The General Assembly finds:

10 (1) that a very large volume of by-product material,
11 commonly referred to as uranium and thorium mill tailings,
12 is located within this State, much of it in urban areas;

13 (2) that such radioactive materials pose a significant
14 risk to the public health, safety, and welfare of the
15 people of Illinois; and

16 (3) that the Illinois Emergency Management Agency
17 ~~Department of Nuclear Safety~~, pursuant to the provisions of
18 the Radiation Protection Act of 1990, regulates the
19 generation, possession, use, and disposal of such
20 materials to protect the public health and safety from the
21 radiation risks associated with these materials and to
22 ensure that they do not pose an undue risk to the public
23 health, safety, or the environment; and

24 (4) that in addition to this regulation, it is
25 beneficial for the State to have a policy promoting the
26 safe and timely decommissioning of source material milling
27 facilities that have come to the end of their productive
28 lives and the safe and effective decontamination of areas
29 within the State that are contaminated with uranium or
30 thorium mill tailings.

31 (a-5) The General Assembly also finds:

32 (1) that the Director of Nuclear Safety, as represented

1 by the Attorney General, and Kerr-McGee Chemical
2 Corporation entered into an agreement dated May 19, 1994
3 and other related agreements to facilitate the removal of
4 by-product material from the City of West Chicago in
5 reliance upon the enactment of this amendatory Act of 1994;

6 (2) that the May 19, 1994 agreement is consistent with
7 the public purpose as expressed in this Act; and

8 (3) that the May 19, 1994 agreement is not an agreement
9 intended to relieve Kerr-McGee Chemical Corporation from
10 the applicability of this Act under Section 35.

11 (b) It is the purpose of this Act to establish a
12 comprehensive program for the timely decommissioning of
13 uranium and thorium mill tailings facilities in Illinois and
14 for the decontamination of properties that are contaminated
15 with uranium or thorium mill tailings. It is the intent of the
16 General Assembly that such a program provide for the safe
17 management of these mill tailings and that the program
18 encourage public participation in all phases of the development
19 of this management program. It is further the intent of the
20 General Assembly that this program be in addition to the
21 regulatory program established in the Radiation Protection Act
22 of 1990.

23 (Source: P.A. 87-1024; 88-638, eff. 9-9-94.)

24 (420 ILCS 42/10)

25 Sec. 10. Definitions. As used in this Act:

26 "Agency" means the Illinois Emergency Management Agency.

27 "By-product material" means the tailings or wastes
28 produced by the extraction or concentration of uranium or
29 thorium from any ore processed primarily for its source
30 material content, including discrete surface wastes resulting
31 from underground solution extraction processes but not
32 including underground ore bodies depleted by such solution
33 extraction processes.

34 "Department" means the Department of Nuclear Safety.

35 "Director" means the Director of the Illinois Emergency

1 Management Agency ~~Department of Nuclear Safety~~.

2 "Person" means any individual, corporation, partnership,
3 firm, association, trust, estate, public or private
4 institution, group, agency, political subdivision of this
5 State, any other State or political subdivision or agency
6 thereof, and any legal successor, representative, agent, or
7 agency of the foregoing, other than the United States Nuclear
8 Regulatory Commission, or any successor thereto, and other than
9 federal government agencies licensed by the United States
10 Nuclear Regulatory Commission, or any successor thereto.

11 "Radiation emergency" means the uncontrolled release of
12 radioactive material from a radiation installation that poses a
13 potential threat to the public health, welfare, and safety.

14 "Source material" means (i) uranium, thorium, or any other
15 material that the Agency ~~Department~~ declares by order to be
16 source material after the United States Nuclear Regulatory
17 Commission or its successor has determined the material to be
18 source material; or (ii) ores containing one or more of those
19 materials in such concentration as the Agency ~~Department~~
20 declares by order to be source material after the United States
21 Nuclear Regulatory Commission or its successor has determined
22 the material in such concentration to be source material.

23 "Specific license" means a license, issued after
24 application, to use, manufacture, produce, transfer, receive,
25 acquire, own, or possess quantities of radioactive materials or
26 devices or equipment utilizing radioactive materials.

27 (Source: P.A. 87-1024.)

28 (420 ILCS 42/15)

29 Sec. 15. Storage fees.

30 (a) Beginning January 1, 1994, an annual fee shall be
31 imposed on the owner or operator of any property that has been
32 used in whole or in part for the milling of source material and
33 is being used for the storage or disposal of by-product
34 material, equal to \$2 per cubic foot of by-product material
35 being stored or disposed of by the facility. After a facility

1 is cleaned up in accordance with the ~~Department's~~ radiological
2 soil clean-up criteria specified by the Department of Nuclear
3 Safety or its successor agency, the Illinois Emergency
4 Management Agency, no fee shall be due, imposed upon, or
5 collected from an owner. No fee shall be imposed upon any
6 by-product material moved to a facility in contemplation of the
7 subsequent removal of the by-product material pursuant to law
8 or upon any by-product material moved to a facility in
9 contemplation of processing the material through a physical
10 separation facility. No fees shall be collected from any State,
11 county, municipal, or local governmental agency. In connection
12 with settling litigation regarding the amount of the fee to be
13 imposed, the Director may enter into an agreement with the
14 owner or operator of any facility specifying that the fee to be
15 imposed shall not exceed \$26,000,000 in any calendar year. The
16 fees assessed under this Section are separate and distinct from
17 any license fees imposed under Section 11 of the Radiation
18 Protection Act of 1990.

19 The fee shall be due on June 1 of each year or at such other
20 times in such installments as the Director may provide by rule.
21 To facilitate the expeditious removal of by-product material,
22 rules establishing payment dates or schedules may be adopted as
23 emergency rules under Section 5-45 of the Administrative
24 Procedure Act. The fee shall be collected and administered by
25 the Agency ~~Department~~, and shall be deposited into the General
26 Revenue Fund.

27 (b) Moneys may be expended by the Agency ~~Department~~,
28 subject to appropriation, for the following purposes but only
29 as the moneys relate to by-product material attributable to the
30 owner or operator who pays the fees under subsection (a):

31 (1) the costs of monitoring, inspecting, and otherwise
32 regulating the storage and disposal of by-product
33 material, wherever located;

34 (2) the costs of undertaking any maintenance,
35 decommissioning activities, cleanup, responses to
36 radiation emergencies, or remedial action that would

1 otherwise be required of the owner or operator by law or
2 under a license amendment or condition in connection with
3 by-product materials;

4 (3) the costs that would otherwise be required of the
5 owner or operator, by law or under a license amendment or
6 condition, incurred by the State arising from the
7 transportation of the by-product material from a storage or
8 unlicensed disposal location to a licensed permanent
9 disposal facility; and

10 (4) reimbursement to the owner or operator of any
11 facility used for the storage or disposal of by-product
12 material for costs incurred by the owner or operator in
13 connection with the decontamination or decommissioning of
14 the storage or disposal facility or other properties
15 contaminated with by-product material. However, the amount
16 of the reimbursements paid to the owner or operator of a
17 by-product material storage or disposal facility shall not
18 be reduced for any amounts recovered by the owner or
19 operator pursuant to Title X of the federal Energy Policy
20 Act of 1992 and shall not exceed the amount of money paid
21 by that owner or operator under subsection (a) plus the
22 interest attributable to amounts paid by that owner or
23 operator.

24 An owner or operator who incurs costs in connection with
25 the decontamination or decommissioning of the storage or
26 disposal facility or other properties contaminated with
27 by-product material is entitled to have those costs promptly
28 reimbursed as provided in this Section. In the event the owner
29 or operator has incurred reimbursable costs for which there are
30 not adequate moneys with which to provide reimbursement, the
31 Director shall reduce the amount of any fee payable in the
32 future imposed under this Act by the amount of the reimbursable
33 expenses incurred by the owner or operator. An owner or
34 operator of a facility shall submit requests for reimbursement
35 to the Director in a form reasonably required by the Director.
36 Upon receipt of a request, the Director shall give written

1 notice approving or disapproving each of the owner's or
2 operator's request for reimbursement within 60 days. The
3 Director shall approve requests for reimbursement unless the
4 Director finds that the amount is excessive, erroneous, or
5 otherwise inconsistent with paragraph (4) of this subsection or
6 with any license or license amendments issued in connection
7 with that owner's or operator's decontamination or
8 decommissioning plan. If the Director disapproves a
9 reimbursement request, the Director shall set forth in writing
10 to the owner or operator the reasons for disapproval. The owner
11 or operator may resubmit to the Agency Department a disapproved
12 reimbursement request with additional information as may be
13 required. Disapproval of a reimbursement request shall
14 constitute final action for purposes of the Administrative
15 Review Law unless the owner or operator resubmits the denied
16 request within 35 days. To the extent there are funds
17 available, the Director shall prepare and certify to the
18 Comptroller the disbursement of the approved sums to the owners
19 or operators or, if there are insufficient funds available, the
20 Director shall off-set future fees otherwise payable by the
21 owner or operator by the amount of the approved reimbursable
22 expenses.

23 (c) To the extent that costs identified in parts (1), (2),
24 and (3) of subsections (b) are recovered by the Department or
25 its successor agency, the Illinois Emergency Management
26 Agency, under the Radiation Protection Act of 1990 or
27 Department or Agency ~~its~~ rules, the Department or the Agency
28 shall not use money under this Section to cover these costs.

29 (d) (Blank).

30 (Source: P.A. 94-91, eff. 7-1-05.)

31 (420 ILCS 42/25)

32 Sec. 25. Response plans.

33 (a) Within one year of September 6, 1992 (the effective
34 date of Public Act 87-1024) ~~this Act~~, the owner or operator of
35 any licensed site where by-product material is located on the

1 effective date of this Act shall file with the Department of
2 Nuclear Safety, a detailed plan describing all of the
3 activities necessary for implementation of a permanent
4 remedial action, including, but not limited to, disposal of
5 by-product material at a permanent disposal site, restoration
6 of the licensed site to unrestricted use, and decontamination
7 of all properties that have been identified as being
8 contaminated with by-product material produced at the licensed
9 site. If the licensed site is located in a municipality or
10 within 1.5 miles of the boundary of any municipality, the plan
11 shall also be filed with the governing body of that
12 municipality. If the licensed site is in an unincorporated area
13 of a county and situated more than 1.5 miles from the boundary
14 of the nearest municipality, the plan shall be filed with the
15 governing body of that county.

16 (b) Within one year of discontinuing active source material
17 milling operations, the owner or operator of any facility where
18 ores are processed primarily for their source material content
19 shall file with the Agency ~~Department~~ a detailed plan
20 describing all of the activities necessary for implementation
21 of a permanent remedial action, including, but not limited to,
22 disposal of by-product material at a permanent disposal site,
23 restoration of the facility site to unrestricted use, and
24 decontamination of all properties that have been identified as
25 being contaminated with by-product material produced at the
26 licensed facility. If the facility is located in a municipality
27 or within 1.5 miles of the boundary of any municipality, the
28 plan shall also be filed with the governing body of that
29 municipality. If the site is in an unincorporated area of a
30 county and situated more than 1.5 miles from the boundary of
31 the nearest municipality, the plan shall be filed with the
32 governing body of that county.

33 (c) The plans filed under subsection (a) or (b) shall
34 include a schedule for disposal of by-product material at a
35 facility that has a specific license authorizing disposal of
36 by-product material. The schedule shall be such that disposal

1 could be completed within 48 months or less of commencement of
2 disposal activities. The plans shall also describe permits,
3 approvals, and other authorizations that will need to be
4 obtained and the plans for obtaining those permits, approvals
5 and authorizations.

6 (Source: P.A. 87-1024.)

7 (420 ILCS 42/30)

8 Sec. 30. Rules and regulations. The Agency ~~Department~~ may
9 adopt such rules and procedures as it may deem necessary or
10 useful in the execution of its duties under this Act. The rules
11 may require submission of pertinent information by taxpayers.

12 (Source: P.A. 87-1024.)

13 (420 ILCS 42/32)

14 Sec. 32. Limitations on groundwater and property use.

15 (a) In connection with the decommissioning of a source
16 material milling facility or the termination of the facility's
17 license, the Agency ~~Department~~ shall have the authority to
18 adopt by rule, or impose by order or license amendment or
19 condition, restrictions on the use of groundwater on any
20 property that has been licensed for the milling of source
21 material and any property downgradient from the property that
22 has been licensed for the milling of source material where the
23 groundwater impacted by a licensed facility has constituents
24 above naturally-occurring levels and is in excess of the
25 groundwater standards enforceable by the Agency ~~Department~~.

26 (b) In connection with the decommissioning of a source
27 material milling facility or the termination of the facility's
28 license, the Agency ~~Department~~ shall have the authority to
29 adopt by rule, or impose by order or license amendment or
30 condition, restrictions on property that has been licensed for
31 the milling of source material where the soil has constituents
32 above naturally-occurring levels to limit or prohibit:

33 (1) the construction of basements or other similar
34 below-ground structures, other than footings or pilings,

1 on any portion of the property where elevated levels of the
2 constituents are present in the soil; and

3 (2) the excavation of soil from a portion of the
4 property where elevated levels of the constituents are
5 present in the excavated soil, unless the excavated soil is
6 (i) disposed of in a facility licensed or permitted to
7 dispose of that soil or (ii) returned to the approximate
8 depth from which it was excavated and covered with an
9 equivalent cover.

10 (c) The authority granted to the Agency ~~Department~~ under
11 this Section is intended to secure the greatest protection of
12 the public health and safety practicable in the decommissioning
13 of a source material milling facility or the termination of the
14 facility's license and shall be in addition to the authority
15 granted under the Radiation Protection Act of 1990.

16 (Source: P.A. 90-39, eff. 6-30-97.)

17 (420 ILCS 42/35)

18 Sec. 35. Agreements. If the Director ~~of Nuclear Safety~~
19 certifies to the General Assembly that the State and the owner
20 or operator of a licensed by-product material storage or
21 disposal facility have entered into an agreement enforceable in
22 court that accomplishes the purposes of subsection (b) of
23 Section 5 of this Act, and that also provides financial
24 assurances to protect the State against costs described in
25 parts (1), (2), and (3) of subsection (b) of Section 15, then
26 Sections 15, 25 and 40(b) of this Act, and any rules that the
27 Agency ~~Department~~ may adopt to implement those Sections, shall
28 not apply to that owner or operator.

29 (Source: P.A. 87-1024.)

30 (420 ILCS 42/40)

31 Sec. 40. Violations and penalties.

32 (a) Any person who violates Section 20 shall be subject to
33 a civil penalty not to exceed \$10,000 per day of violation.

34 (b) Any person failing to pay the fees provided for in

1 Section 15 shall be subject to a civil penalty not to exceed 4
2 times the amount of the fees not paid.

3 (c) Violations of this Act shall be prosecuted by the
4 Attorney General at the request of the Agency ~~Department~~. Civil
5 penalties under this Act are recoverable in an action brought
6 by the Attorney General on behalf of the State in the circuit
7 court of the county in which the facility is located. All
8 amounts collected from fines under this Section shall be
9 deposited in the General Revenue Fund. It shall also be the
10 duty of the Attorney General upon the request of the Agency
11 ~~Department~~ to bring an action for an injunction against any
12 person violating any of the provisions of this Act. The Court
13 may assess all or a portion of the cost of actions brought
14 under this subsection, including but not limited to attorney,
15 expert witness, and consultant fees, to the owner or operator
16 of the source material milling facility or to any other person
17 responsible for the violation or contamination.

18 (Source: P.A. 94-91, eff. 7-1-05.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.